Why Brownell Does Not Want the Communists Outlawed, Page Three

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Behind the Attack on Dr. Oppenheimer

I

The most important conclusion to be drawn from the Oppenheimer affair is that the United States is becoming a sick nation. In an earlier religious age, it would have seemed that a curse had fallen on the people who first dared use against other human beings the awful potential of the atom. A sense of insecurity has grown among us ever since we discovered the weapon which seemed to promise an almost absolute security. Only in an atmosphere grown morbid would so much public energy and discussion be wasted on a series of spurious melodramas at a time when war and depression are urgent problems.

The day the Oppenheimer documents were released, the Washington *Evening Star* in an editorial on the next horror, the C-bomb, said the fact that it "might bring about the end of the world" was "good insurance that the thing will never be produced or set off." This assumes, however, the paper concluded, "that nations and their governments will not go berserk, like Samson, and commit suicide by pulling down all the pillars of civilization." It also assumes that after the agony in store for Dr. Oppenheimer other scientists will be intrepid enough to object on those "moral grounds" which are made to seem so sinister in the charges against him.

II

Our allies must now take seriously into account the pathological state of our politics. The nation which holds the greatest destructive power in all history is itself in the grip of panicky fears which make reasonable policies unlikely. Behind this attack on the scientist who did more than any other one man to develop the atom bomb may be descried two forces. One, in which the FBI and McCarthy bulk large, is driving toward an American Fascism. The other stems from the Air Force, and particularly from the Strategic Air Command, with its apocalyptic conception of a new war.

The issue between Dr. Oppenheimer and the Strategic Air Command is fundamental. It deserves to be debated as policy and not dramatized as spy soap opera. It was spelled out by Dr. Oppenheimer in that famous article on "Atomic Weapons and American Policy" in *Foreign Affairs* last July in which he likened the U. S. and the U.S.S.R. "to two scorpions in a bottle, each capable of killing the other, but only at the risk of his own life." The issue may also be seen in the article which alerted McCarthy to this new opportunity last spring—the unsigned piece (Charles J. V. Murphy was the author) published by *Fortune* last May called "The Hidden Struggle for the H-Bomb: The story of Dr. Oppenheimer's persistent campaign to reverse U. S. military strategy." This was of Air Force inspiration.

The issue is whether national resources are to be diverted from the super Wagnerian glamor of the overwhelming air attack to the construction of defenses against a similar attack from an enemy. "A high officer of the Air Defense Command said—and this only a few months ago in a most serious discussion of measures for the continental defense of the United States—," Dr. Oppenheimer revealed in *Foreign Affairs*, "that it was our policy to attempt to protect our striking force, but that it was not really our policy to attempt to protect this country, for that is so big a job that it would interfere with our retaliatory capabilities." The related issue, as set forth in the *Fortune* article, is whether both sides might not forswear strategic air warfare, thus "bringing the battle back to the battlefield."

This would put the Strategic Air Command out of business and deprive it of all that lovely boom-boom. At one point, according to the *Fortune* article, Dr. Oppenheimer "produced an explosion . . . by a veiled suggestion that Air Force doctrine was based on the slaughter of civilians." It would be interesting to know by what secret device our Hell bombs will damage only uniformed personnel.

The *Fortune* article sneered at the electronic "Maginot Line" proposed by Dr. Oppenheimer and his associates: "an early warning system of interlocking radar stations far out on the Arctic rim; and behind this a deep air-defense system utilizing guided missiles, supersonic aircraft, even squadrons of aircraft borne by 'mother' aircraft on continuous patrol."

Fortune complained that "he (Dr. Oppenheimer) and his followers have no confidence in the military's assumption that SAC as a weapon of mass destruction is a real deterrent to Soviet action. On the contrary, they believe that, by generating fear in the Kremlin, it has been a goad to the development of counter-atomic weapons. They argue that it has aroused misgivings in Western Europe; and that a renunciation of atomic-offensive powers by both major adversaries is essential to an easement of world tensions." This led Dr. Oppenheimer to argue against the H-bomb. This is the heresy for which he must now be destroyed.

III

There is a hint in the *Fortune* article that Eisenhower, perhaps because he is an Army man, has been friendly to Dr. Oppenheimer's views. "Sensing defeat in the Pentagon," *Fortune* says of Dr. Oppenheimer and his allies, they "now sought the support of the man charged with the defense of

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Western Europe. Early in December, 1951, they turned up at NATO headquarters with the Vista report [the report which carried the "veiled suggestion" about slaughter of civilians, IFS]. General Eisenhower was heartened by its optimistic views of the feasibility of holding Europe. *It is doubtful, however, that he concerned himself with its implications as they pertained to SAC."*

The italics are added. Eisenhower does not seem to have objected to these implications. The article goes on to say that his air adviser did. The Air Force finally defeated the plan. Eisenhower is in a more powerful position now than he was then. And his atomic address to the UN General Assembly last December echoed Dr. Oppenheimer's views, particularly in the assertion that even a "vast superiority" such as we possess was no safeguard against the "fearful" toll that an enemy could inflict.

IV

Those who were pressing for an "Operation Candor" to debate the momentous issues of "defense" vs. "massive retaliation" were a menace to the Strategic Air Command, since any revision of policy would be at its expense. Questions of judgment, policy, and morality have been submerged in the hobgoblin atmosphere of a "loyalty" proceeding. The mystery lies in how this was opened and why—since it was opened—there was such long delay in revoking Dr. Oppenheimer's security clearance. The Eisenhower security order of last May did require a security review for all employes and consultants concerning whom there was "substantial" derogatory information. But who decided that the stale earlier charges of Communist association and the inflated later charges of delaying the H-bomb were "substantial"?

None knew better than Major General K. D. Nichols, general manager of the AEC, the signer of the loyalty "charges," how insubstantial they were. General Nichols, a West Pointer and an engineer, was General Groves' deputy all through the Manhattan District experience. The charges were not considered "substantial" by Groves nor later by those including President Truman to whom the same charges were brought by the FBI.

We come here to another strand in the story. The FBI had been excluded from the most important intelligence assignment of the war—the safeguarding of the atom bomb. The Manhattan District had its own intelligence service, responsible like the rest of the project to General Groves. It was not until the Atomic Energy Commission took over from the military in January, 1947, that the FBI assumed responsibility for atomic security.

According to a story published in the late edition of the *New York Times* last Tuesday, the loyalty of Dr. Oppenheimer seemed to be on the first order of business for the FBI. Early in March of that year, J. Edgar Hoover phoned David Lilienthal asking for his personal attention to a special report which would reach him soon. The report, when it arrived on March 8, dealt with Dr. Oppenheimer, who had been made chairman of the General Advisory Committee. The charges were then passed on by the Atomic Energy Commission, by the powerful military liaison committee, by Senators McMahon and Hickenlooper, and by President Truman. Dr. Oppenheimer was strongly supported then as he is now by General Groves. If the *Times* story is correct, Mr. Hoover shortly afterward resumed the attack but again without success. Vice President Nixon did not consider the charges substantial and according to the Washington *Evening Star* of last Wednesday dissuaded the McCarran committee in 1950 from going into the subject after the California State Un-American Activities Committee had obtained testimony from Paul Crouch which Dr. Oppenheimer was able to prove false. What made them substantial again last July?

V

The old charges have not even been brought up to date. The Nichols letter refers to other scientists. An outstanding example is "Scientist X," Joseph W. Weinberg [see the *Weekly*, Vol. 1, No. 9, "The Ordeal of Scientist X" for the full story]. No reference is made to the fact that Weinberg denied the charges made against him, was tried for perjury and acquitted. Yet the government's ignominious failure to prove a case after so many years of smearing Weinberg casts a doubt on the charges against others named.

As for the new charges of opposing and delaying the H-bomb, Homer Bigart in the New York *Herald-Tribune* last Wednesday reported Dr. Oppenheimer " 'outraged' that such a charge was not promptly and publicly repudiated by Admiral Lewis L. Strauss, chairman of the AEC, and Dr. Henry S. Smyth, another member of the AEC" who "were in the AEC when the controversy arose and must have known that there was nothing sinister in the arguments advanced openly by Dr. Oppenheimer."

The strangest question is this: if last July these old and new charges were considered substantial enough to warrant a new investigation of Dr. Oppenheimer, why was he not deprived of security clearance by the President until last December, six months later? It is here that the shadow of the Harry Dexter White case may fall across the Oppenheimer story. Attorney General Brownell in November accused Mr. Truman of ignoring an FBI report on Harry White. Did this help bring pressure on Eisenhower? Was it argued that he ought not to put himself in the same position by ignoring an FBI report on Dr. Oppenheimer? On December 8, Eisenhower echoed Dr. Oppenheimer's views before the UN General Assembly. On December 23, he revoked Dr. Oppenheimer's clearance. That same day General Nichols sent Dr. Oppenheimer the letter which put "veracity, conduct and even your loyalty" in question.

VI

So the decision was made to initiate a case more explosive even than that of Hiss. Dr. Oppenheimer has far more powerful friends; to destroy him would damage the reputation of many others, including General Groves, Nixon and the members of the Joint Congressional Committee, perhaps of Eisenhower himself. The outcome is far from certain. The battle joined is a battle for the future of America. The ruin of Dr. Oppenheimer would intensify political paranoia and increase the power of those like McCarthy who live upon it. His vindication would be a setback from which they might not recover.

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Will A Super McWhoozis Some Day Think This Sinister?

Mr. Brownell, Too, Opposes Outlawing The Communists

It seems that during the Administration of FDR all was not treason. According to Attorney General Brownell, preparations for the recent trial of the Detroit Communist leaders began during the Roosevelt Administration. At that time, according to Brownell's radio and TV address of April 9, several FBI undercover informants "began their training in counter-espionage."

Their first feat, however, does seem a little disappointing. "With patience and skill," Brownell said, "(they) were able to become members of the Communist party cells" and thanks to their indoctrination "were accepted as members in the Communist party without suspicion." This is less than breath-taking. In those years, at least, it was as easy to join the Communist party as to join the YMCA.

Their assignment, as Brownell related, was to uncover Communist efforts "to infiltrate commerce and industry in that great industrial center." Detroit is full of plants to be sabotaged and industrial secrets to be stolen; the radio and TV audience must have tingled with anticipation, waiting to hear what the FBI men found out.

This, too, proved disappointing. For when the six leaders of the Communist Party in the Detroit area were finally brought to trial, it was not for stealing defense secrets or sabotaging key production or even for planning to do so some time in the future. The charge was indeed "conspiring" but only "conspiring to advocate." The main evidence there as in Smith Act trials elsewhere were the same books —by Marx, Lenin and Stalin. It was from the use of these books that the government deduced an intent some time in the future to advocate revolutionary doctrine.

The Attorney General smirked proudly as he told how since 1948 (still, though he did not mention it, part of those 20 years of Democratic treason), 105 of the principal leaders of the Communist party had been indicted and 67 convicted of this same crime, "conspiracy to advocate." It must have been disappointing for listeners to realize that not a single leader had been indicted for anything more dramatic.

Mr. Brownell smirked again and said that the success of the FBI had been "so outstanding that the Communist party in this country doesn't know which of its Communist members to trust." He paused and added, "I assure you that makes their conspiracy a very hazardous occupation."

It is a measure of these "crimes" that they are hazardous only because Congress enacted the Smith Act in 1940, with the first peacetime sedition provisions in American history since the Alien and Sedition Laws of 1798, making "advocacy" and "conspiring to advocate" a crime. From 1798 to 1940, it was not a crime to advocate revolutionary ideas. There were and are, of course, laws against disturbing the public peace, attempting to overthrow the government, and engaging in seditious conspiracy, laws against treason, espionage and sabotage, but the FBI was not able in the case of a single Communist leader among the 105 to find enough evidence to justify even an indictment for these more tangible crimes.

If there were evidence of these real crimes, it would not be necessary for the Attorney General to be asking for new anti-Communist laws. These (like the Smith Act) would make it possible to punish people for their ideas (or alleged ideas) alone in the absence of evidence that they had committed, or conspired to commit, crimes against public order.

Mr. Brownell claims to be acting within the framework of the Constitution. But how can he fit into the Constitution the bill he wants to allow an employer to dismiss from defense plants "during a national emergency" (we "emergencies" awful easy) "any person whose record shows he is likely to engage in sabotage or espionage?" Where in the Constitution, or in Anglo-American tradition, or in the law of any free society, will he find precedent for legislation which determines (by peering into a man's skull?) that he is "likely" to commit a crime? The only precedent that occurs to us is the "preventive arrest" of Hitler's Reich.

By now there must be so many FBI men in the Communist party as to give our secret police a vested interest in keeping the party alive. In past years, other Attorney Generals and J. Edgar Hoover have always opposed bills to outlaw the Communist party. Mr. Brownell followed in their footsteps before the House Judiciary Committee last Monday.

"To the extent that such a bill would force the Communist movement underground," the Attorney General testified, "cause it to close its headquarters, terminate its publications, it would at the same time and to the same extent increase the already difficult investigatory job of the FBI." A legal Communist party is a convenience.

No lawyer hired by the Communist party could have argued more ably the dubious constitutionality of any measure to outlaw the Communist party, and the complications it would create for the government. The McCarran Internal Security Act rests on provisions requiring Communist and Communist front organizations to register their officers and members. But under the Fifth amendment (which says no person shall be compelled to testify against himself), you cannot make a person register himself as a Communist if at the same time being a Communist is made a crime. Mr. Brownell said enactment of a bill to oulaw the Communist party and make membership a crime would undercut the McCarran Act.

Mr. Brownell said a bill to outlaw Communists would also be open to attack as an infringement of the First amendment, and as a legislative fiat declaring a group of persons guilty of a crime without individual proof. The party would go underground, destroying all membership records. "Thus," Mr. Brownell pleaded, "proof of party membership in many cases might well be established only through the oral testimony of confidential informants, people whose value for such purposes would be thereafter completely destroyed." To protect its confidential informants, the FBI must protect the Communist party.

If the paranoid delusions fostered by the American government for a decade should spread, Mr. Brownell and Mr. Hoover may shudder some day over the sinister light in which this testimony may be read by a Super McWhoozis.

Non-Communists left-of-center who think the outlawry of the Communist party would solve their problems are very foolish. The bills before Congress would do more than declare the Communist party illegal; they would make all suspected Communists guilty of a felony.

When and if a bill to outlaw the Communist party is passed, the U.S.A. will have taken a major step toward Fascism. The Department of Justice for its own reasons has again moved to block such legislation. Its reasons are quite simple. It believes that bills to outlaw the Communist party might never get past the Supreme Court, that the same end may be achieved more skilfully by the use of the McCarran Act.

Mr. Brownell never said so too plainly but the steps he envisages are these: The Communists will refuse to register when and if the final order of the Subversive Activities Control Board is upheld by the Supreme Court. In that event they can be prosecuted for failure to register, and the "they" can be made flexible enough to hound a wide assortment of other radicals and liberals. Instead of merely being blacklisted, radicals could then be prosecuted for non-registration. This is the meaning of the position taken by Mr. Brownell.

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JENNINGS PERRY'S PAGE

Friends Seed Jenkins, if Scratched, to Skin Joe

KNOXVILLE—The first congressional district of Tennessee, lying between Walden's Ridge and the Great Smokies and including the site of the Free State of Franklin, the first republic organized in America, proudly claims to be "more Republican than Maine." Ray Howard Jenkins, 57-year-old, six-foot-three-inch special counsel in the McCarthy-army "you're another" row, claims to be as good a Republican as any in the district. He supported Taft before the convention, Eisenhower after. He has no preconceived notions, he has asserted, as to the merits of the controversy he has been chosen to investigate—and, furthermore, that he has expressed no opinion "publicly or privately" on McCarthy or McCarthyism. His friends and associates here, where he has practiced law for 33 years, say they believe him.

"He just wasn't interested. Ray Jenkins," they insist, "is interested in just two things—a case before a jury and the size of the fee."

Jenkins was recommended to the Senate subcommittee after the quick bow-out of Boston's Sears by Sen. Dirksen of Illinois and Rep. Howard Baker of Tennessee. The rising question is whether he was picked for a mission of pulling the party's chestnuts out of the showdown fire. His own law partner predicts that Jenkins will be "on the lookout for ways and means to minimize differences, if possible." Concurring, other Knoxville lawyers of both parties declare that Jenkins would not have been sponsored by Dirksen and Baker "if there had been the remotest idea that he would try to wield a switch-blade knife on McCarthy's hide."

The truth is, viewed *ad hominem*, that the Republican Party can expect as much service from its Tennessee son as requires no self-sacrifice, and that McCarthy's hide will be safe as long as (a) McCarthy refrains from scratching Jenkins and (b) Jenkins, not McCarthy, takes 51 per cent of the headlines. For the tall, lean Knoxville lawyer carries a switch-blade knife in his head, delicately geared to the liveliest appreciation of the main chance for himself.

Jenkins is a trial lawyer, a high-priced trial lawyer in his neck of the woods, with the impressive reputation of never in over 300 murder cases losing a client to the "chair." His ambition is to be a higher-priced trial lawyer and to enlarge his woods. Upon his appointment by the committee, Old Guard Republicans in his state rushed to propose him as a candidate for the seat of Sen. Estes Kefauver: Jenkins stomped on that promptly and decisively. To him the hearing is not a step to any office, but possibly a ticket to $25,000 and $50,000 retainers in tough criminal cases in the South—and perhaps beyond.

He does not like being tagged a "hill-billy Darrow." "Darrow," he retorts, "had brains." This is too much modesty; Jenkins has brains, but on the lazy side. His forte is pleading: once he got off a client on eight separate charges of murder. A few years ago in a case celebrated in East Tennessee he undoubtedly saved the life of Clarence Darden, a Negro, charged with killing his restaurant-keeper employer with a penknife. First he sent Darden back to his church to raise $5000, then Jenkins took the case and melted judge and jury to tears with a demand that Northern critics be shown that "justice and fairness" lives in the South.

Another time, he won acquittal in what had seemed an open and shut arson case with an impassioned appeal to the jury to reveal its own greatness of soul by freeing "this immigrant Greek." Whereupon his joyful client kissed not only his attorney and the jurors, but the witnesses and attorneys for the prosecution as well. Judges and juries love his performances, and sedate jurists have been known to duck behind the bench to laugh at his salty tales.

Conceivably his new role under the great eye of TV may throw him; his friends think not. McCarthy may tangle with him; his friends say McCarthy would be a fool. For Ray Jenkins, they assure you here, "knows how to take care of himself, and, come right down to it, that's the only concern he ever has."

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